IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 50 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULUBEN WIFE OF ASHOK RAJPUT VISHVKARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 50 of 2003

MR SHAKEEL A QURESHI for Petitioner No. 1

MISS NANDINI JOSHI Ld. APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

Heard ld. counsel appearing for the petitioner Mr. SA Kureshi and ld. APP Miss Joshi for the

respondents.

The petitioner has challenged the legality and validity of the order of externment passed by the Deputy Commissioner of Police (Eastern Division), Surat City dated 1.10.2002 and the order of confirmation dated 2.11.2002 passed by the appellate authority in exercise of powers vested with the appellate authority under sec. 60 of the Bombay Police Act, 1951.

The petitioner-externee is a lady having pernament resident in the city of Surat. The petitioner has challenged the legality and validity of both these orders on number of grounds referred to in the memo of petition. The ld. counsel has taken me through these grounds and has submitted that both these orders suffers conformity and they being bad should be set aside.

I have carefully gone through the notice to show-cause served to the petitioner under sec. 59 of the said Act and the order passed by the externing authority.

Mr. Qureshi has mainly concentrated his arguments on two points. Firstly, he has submitted that notice to show-cause is materially vague and the authority has not take care to give details of the alleged offences committed and especially the role played by the petitioner in the committal of the said offences. The second point argued by Mr. Qureshi is that the notice to show cause was issued by the authority under sec. 59 of the Act on 11.6.2002 and the order under challenge is of dated 1.10.2002. The authority at the time of initiation of the proceedings of exterment has mainly considered the registration of four criminal offences registered with Udhana Police Station of Surat city. All these offences are punishable under the provisions of Bombay Prohibition Act and has also placed reliance on the statements of two secret witnesses allegedly recorded on or about 2.11.2001 and 31.1.2002. No reasonable explanation is coming forward either in the notice to show cause or in the order under challenge as to why unreasonable delay was caused in issuing the notice under sec. 59 of the Act and in passing the order. It can be said that the order of externment is passed practically after nine months from the date of commission of the last offence on 29.1.2002. The Externining Authority also considered the fact that the petitioner lady is having three minor children and her so called activity is limited under the area of Udhana Police Station but while passing the order of externment the authority has not cared to consider whether it is

sufficient to extern the present petitioner from the area under the administration of Surat Police Commissionerate. When a lady having minor children is to be externed than the authority should assign specific reasons if the order of externment is to extern from which area namely the area of adjacent districts or talukas, on the contrary in the present case, the authority even without referring the notice to show cause has included two districts which are not mentioned in the show cause notice namely Bharuch and Dang from which the petitioner is externed. For short, the order under challenge passed by the Deputy Commissioner of Police, Eastern Divsion, dated 1.10.2002 is bad and requires to be quashed and set aside. The order passed by the appellate authority also suffers from the similar vice and conformity. While dealing with the appeal, the appellate authority ought to have noticed this material informity in the notice to show cause and the order passed by the externing authority, the appellate authority could have reduced the area from which the petitioner has been externed, but it seems that the order passed by the appellate authority is mechanical. For short, both these orders are challenged being bad and illegal, I am inclined to allow this petition.

In the result, this petition is allowed. The impugned orders passed by the Deputy Commissioner of Police, Eastern Division, Surat City dated 1.10.2002 and confirmed by the appellate authority by order dated 2.11.2002 are hereby quashed and set aside. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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